***THE HON'BLE MR JUSTICE V.V.S.RAO**

+ WRIT PETITION Nos.17945 AND 17951 OF 2006

-

% Dated 13.09.2006

G.Ramesh and others

… Petitioners.

VERSUS

$ The Revenue Divisional Officer, Nalgonda District and others..

… Respondents.

! Counsel for Petitioners: Mr.K.Mahipathi Rao

^Counsel for Respondents: Assistant Government Pleader for Revenue

<GIST:

>HEAD NOTE:

? Cases referred

1. 2006 (2) ALD 342

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.17945 AND 17951 OF 2006

DATED 13TH SEPTEMBER, 2006

BETWEEN:

G.Ramesh and others

… Petitioners

AND

The Revenue Divisional Officer, Nalgonda District and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.17945 AND 17951 OF 2006

COMMON ORDER:

A short but interesting question that arises for consideration in these two writ petitions is as to whether it is competent to the Revenue Divisional Officer (RDO) to impound improperly/inadequately stamped document under Section 33 of the Indian Stamp Act, 1899 (the Stamp Act, for brevity) and deal such important documents in accordance with Sections 38 and 40 of the Stamp Act.

The petitioners in these two writ petitions entered into sale transactions under documents written on stamp papers worth Rs.100/-. Such documents were executed by M/s.Southern Udyans Limited alienating certain extents of lands in survey Nos.305 and 309 of Lingotham village, Narkatpalli Mandal in Nalgonda District (in the first writ petition) and in survey Nos.198, 199, 207 and 208 in Yellareddigudem village in Narkatpalli Mandal of Nalgonda District (in the second writ petition). As the documents are improperly stamped and they cannot be received as evidence in a Court of law, the petitioners filed applications before the RDO, Nalgonda, on 02.02.2006 requesting to impound and assess proper duty to enable the petitioners to pay the amount. The second respondent received the applications, issued notices on 13.02.2006 advising the petitioners

to attend enquiry on 20.02.2006. The petitioners attended the enquiry, in spite of the same, no orders are passed. Therefore, the petitioners made applications again in July, 2006 and as there was no response, they filed the present writ petitions. In both the writ petitions, it is prayed to issue appropriate direction to the respondents to pass orders in the applications made by the petitioners on 02.02.2006.

Section 33 read with Sections 38 and 40 of the Stamp Act confer power on the Collector to impound the document which is not duly stamped, determine the stamp duty and penalty payable on such document and on payment of such amount, issue certificate under Section 40(1)(a) of the Stamp Act to the effect that the document is duly stamped. Section 33 of the Stamp Act is to the effect that every person in charge of public office, except police officer, to impound the document, which is not duly stamped. Sections 38 and 40 of the Stamp Act require the Collector to impound the document under Section 33 as well as Section 40 of the Stamp Act and determine the correct stamp duty as per Section 40 of the Stamp Act. Whether Revenue Divisional Officer, an officer of the Revenue Department, is Collector for the purpose of Section 40 of the Stamp Act?

Section 2(9) of the Stamp Act defines the term "Collector" as under.

> 2(9). "**Collector**":- "Collector" means,
> (a) within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a district; and
> (b) includes a Deputy Commissioner and any officer whom the State Government may, by notification in the Official Gazette, appoint in this behalf;

The Collector within the limits of towns of Calcutta, Madras and Bombay will be Collector of those places and in respect of others, it shall be the Collector of District. Section 2(9)(b) of the Stamp Act clarifies that the Deputy Commissioner is also the Collector. Apart from this, any officer, who is appointed as Collector by notification in the official gazette by the State Government is the Collector. In **Kilarapu Satyavati v District Collector, Kakinada**[1], this Court considered the scope of the definition of "Collector" as defined in clauses (c) and (ee) of Section 3 of Land Acquisition Act, 1894. After referring to the definition of 'District Collector' as defined in Section 3(11) of the General Clauses Act, 1897, this Court observed as under.

> The terms "Collector" or "District Collector" are not defined in the Act. Section 3(11) of General Clauses Act, 1897 (Central Act No.X of 1897) (hereafter called, the Central

> Act) defines the term “Collector” as to mean in a Presidency town, the Collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere, the Chief Officer incharge of the revenue administration of a District. Section 3(6) of the A.P. General Clauses Act, 1891 (A.P.Act No.I of 1891) (hereafter called, the State Act) defines “Collector” so as to include every officer, who for the time being is authorized to. Further the term “District Collector” is defined under Section 3(8) of the State Act as to mean the Chief Local Officer incharge of the revenue administration of a District. There is not much difference in the definition of the term “Collector” or “District Collector” in the Central or State Act. The Officer, who is Chief Officer incharge of the revenue administration of a District, is the District Collector and when such powers are conferred on an Officer who is authorized to exercise the powers of a Collector, such officer also comes with in the definition of “District Collector”. As seen from the definition of the “Collector”, in Section 3 (c) of the Act, the definition is in two parts. One is descriptive part, according to which, “Collector” means the Collector of the District. Within this expression comes the “District Collector”, who is the Chief Officer of revenue administration of the District. There is inclusive part in the definition, according to which, a Deputy Commissioner and any Officer specially appointed by the appropriate Government to perform the functions of a Collector under the Act is also District Collector. The term “appropriate Government” is defined in Section 3(ee) of the Act as either the State Government, when the land is acquired for the purpose of the State and Central Government when the land is acquired for the purpose of the Union. This definition becomes relevant in the context of acquiring the land and initiating the procedure therefor as contained in Chapter-II of the Act.

Therefore, the officer, who is incharge of the Revenue Administration of the District is the District Collector and any officer who is appointed as Collector under Section 2((9)(b) of the Stamp Act, also comes within the definition of ‘Collector’ under Section 2(9) of the Stamp Act. Here, it is also relevant to refer to clause (10) of Section 3 of the General Clauses Act, which defines “Chief Controlling Revenue Authority” or “Chief Revenue Authority” shall, *inter alia,* means such authority as the State Government may by notification in the official gazette appoint.

The Government of Andhra Pradesh in exercise of their powers under 3(10)(d) of the General Clauses Act has issued notification vide G.O.Ms.No.153, dated 25.03.1995 appointing the Commissioner and Inspector General of Registration and Stamps[2] authorizing to exercise the powers and perform the functions under the provisions of

the Stamp Act. This notification becomes relevant with reference to the Section 76-A of the Stamp Act, which reads as under.

> 76-A. Delegation of certain powers:- The State Government may, by notification in the Official Gazette, delegate –
> (a) all or any of the powers conferred on it by Section 2(9), 33(3)(b), 70(1), 74 and 78 to the Chief Controlling Revenue Authority;
> (b) all or any of the powers conferred on the Chief Controlling Revenue Authority by Sections 45(1) (2), 56(1) and 70(2) to such Subordinate Revenue Authority as may be specified in the notification; and
> (c) all or any of the powers conferred on it by Section 9 (1)(b) to the Commissioner and Inspector General of Registration and Stamps.

Section 76-A of the Stamp Act enables the State Government to delegate its powers under various provisions of the Stamp Act including the power under Section 2(9)(b) of the Stamp Act to appoint any officer as the District Collector.

To enable the Assistant Government Pleader for Revenue (General) and the learned counsel for the petitioners to produce the relevant notifications issued by the Government of Andhra Pradesh appointing the Revenue Divisional Officers in the State generally or the Revenue Divisional Officer in Nalgonda specifically as the Collector under Section 2(9)(b) of the Stamp Act, the matter was adjourned from time to time. No such notification issued by the Government under Section 2(9)(b) of the Stamp Act has been brought to the notice of this Court nor this Court is able to find such notification in any of the annuatated bare acts of Stamp Act or the commentaries. There is also no such notification issued by the Government delegating their powers under Section 2(9) of the Stamp Act to the Chief Controlling Revenue Authority or any notification issued by the latter under Section 76-A of the Stamp Act in exercise of such delegated powers. Indeed, it is clearly admitted that so far Government or the Chief Controlling Revenue Authority have not issued any notification authorizing the Revenue Divisional Officer to exercise powers exercisable by the District Collector under Sections 33, 38 and 40 of the Stamp Act. Therefore, any enquiry contemplated or being conducted by the respondent is without jurisdiction.

A reference may also be made to Circular No.13 issued by the High Court of Adjudicature, Andhra Pradesh, Hyderabad, in R.O.C.No.1628/SO/2005, dated 10.07.2006, with regard to impounding of documents, which are produced before the Court without proper stamp duty. The same reads as under.

HIGH COURT OF ANDHRA PRADESH : : AT HYDERABAD

ROC.NO.1628/SO/2005 DATED:10.07.2006

CIRCULAR NO.13/2006

Sub: Indian stamp Act – Document produced not duly stamped to be impounded by the Court – Instructions – Issued.

@ @ @ @ @

In view of Sections 33, 35, 38 of Indian Stamp Act, when a document is produced into Court not duly stamped, the Court is bound to impound the same or spend it to the Collector for recovery of deficit stamp duty and penalty.

In view of the same all the Presiding Officers of the Courts concerned are directed to take the following steps.

(1) To ensure that the documents which are produced in the court and which are liable to stamp duty are properly stamped.

(2) In case any document is not properly stamped that same shall be impounded and the Presiding Officer shall ensure that an endorsement on the document impounded is made by the Chief Ministerial Officer.

(3) If a party produces a document in the Court which is insufficiently stamped and pays the penalty to the Court as required under Section 33 of the Indian Stamp Act, the same shall be endorsed on the document.

(4) Where a party requests to receive an insufficiently stamped document in evidence, the document shall not be received in evidence, unless, the party pays the required stamp duty and penalty.

(5) If the party requests the Court to send the document to the Collector, for collection of the stamp duty and penalty, the Court may consider such request and send the document to the Collector.

If the stamp duty and penalty is not paid or insufficiently paid on a document produced into Court and no request is made to send the same to the Collector, such document shall not be returned to the party. The same shall be sent to the Collector for appropriate action.

Therefore, all the Presiding Officers of the Subordinate

courts are directed to follow the above instructions scrupulously.

The Unit Heads are requested to communicate this circular to all the Subordinate Courts under their control.

Receipt of this circular be acknowledged.

REGISTRAR GENERAL

Therefore, even as per the High Court Circular, the civil Court is required to send the documents to the "Collector" and not to the Revenue Divisional Officer.

It is the case of the petitioners that they purchased the immovable property under documents which are not duly stamped, and unless and until a certificate is issued under Section 40(1)(a) of the Stamp Act, these documents may not be received as evidence before the Court or any public authority. Therefore, in the interest of the petitioners, the respondents should immediately send the documents submitted by the petitioners on 02.02.2006 to the District Collector, Nalgonda, to take appropriate action in accordance with law.

The writ petitions are accordingly disposed of. No costs.

(V.V.S.RAO,J)

13.09.2006.
pln

Note: LR copy be marked.
(By order)
pln

---

[1] 2006 (2) ALD 342

[2] (i) Section 3 of Registration Act, 1908 empowers the State Government to appoint an Officer to be the Inspector General of Registration.
(ii) the Government of A.P., in G.O.Rt.No.50, General Administration (SpecialA) Department, dated 04.01.1995, created super timescale I.A.S., Officers as the Commissioner and Inspector General in the Registration and Stamps Department.